

NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CA06-1319

JUNE 6, 2007

DELISHA KITTERMAN
APPELLANT

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. DR-04-1874-5]

V.

HON. XOLLIE DUNCAN,
JUDGE

JOE KITTERMAN

APPELLEE

AFFIRMED

This case arises from the divorce of Delisha and Joe Kitterman. Appellant Delisha Kitterman appeals from an order of the Benton County Circuit Court entered on August 28, 2006, ordering the sale by auction of certain items of the parties' personal property. Appellant contends that the parties reached an agreement dividing the personal property and that the circuit court's finding of fact otherwise is clearly erroneous. We disagree and affirm.

The circuit court entered a divorce decree on July 22, 2005, stating that "all the real and personal property now owned by the Plaintiff and the Defendant per the list attached hereto as Exhibit 'B', shall, within 45 days of this decree, be sold at auction . . . with the Clerk of this Court serving as auctioneer." After a hearing on motions by the parties for a modification of

child support and a reduction in alimony on March 9, 2006,¹ the circuit court executed an order of modification reducing appellee's alimony payments and appellant's child-support obligations and then stated:

the parties shall have until Saturday, March 11, 2006 to divide any items of personal property not yet divided pursuant to the previous Order of this Court; that should the parties fail to do so, they shall notify their respective attorneys on Monday, March 13, 2006 of the same; that in this event, all personal property shall be sold by private auction . . . at the Lonesome Oaks Storage site[.]

The parties met over the weekend of March 11 to discuss the division of the personal property. Appellee tendered a written agreement regarding division of the property to appellant on March 14, 2006, which appellant refused to sign. Three months later, on June 16, 2006, appellee filed a petition with the circuit court to appoint an auctioneer to sell the personal property as previously directed by the court. The circuit court held a hearing on the issue on August 7, 2006, and entered an order on August 28, 2006, ordering a sale of the property at an auction conducted within forty-five days at Lonesome Oak Storage. Appellant filed this appeal, arguing that the circuit court's finding that the parties had not entered into an oral agreement for the division of the property is clearly erroneous. We disagree and affirm.

On appeal, we review divorce cases de novo. *Adametz v. Adametz*, 85 Ark. App. 401, 407, 155 S.W.3d 695, 699 (2004). With respect to property issues in a divorce case, we affirm the trial court's findings of fact unless they are clearly erroneous. *Id.* A finding is clearly erroneous when the reviewing court, on the entire evidence, is left with the definite and

¹The order was not entered until March 23, 2006.

firm conviction that a mistake has been committed. *Id.* Findings of fact made by the circuit court in a divorce case will be reviewed by this court in the light most favorable to the appellee, and we will defer to the superior position of the circuit court to judge the credibility of witnesses. *Taylor v. Taylor*, __ Ark. __, __ S.W.3d __ (Feb. 15, 2007).

In order for a contract to be binding on the parties, an acceptance must unconditionally agree to all the material provisions of the offer. *MDH Builders, Inc. v. Nabholz Constr. Corp.*, 7 Ark. App. 284, 289, 17 S.W.3d 97, 100 (2000). Moreover, the agreement is not binding unless there is a “meeting of the minds” as to all terms. *Adametz v. Adametz*, 85 Ark. App. 401, 410, 155 S.W.3d 695, 701 (2004); *Williamson v. Sanofi Winthrop Pharms.*, 347 Ark. 89, 98, 60 S.W.3d 428, 434 (2001). Whether there is a meeting of the minds is not determined by the subjective understanding of the parties but by their objective manifestations of mutual assent. *Hagans v. Haines*, 64 Ark. App. 158, 164-65, 984 S.W.2d 41, 44 (1998). This expressed or manifested intention of the parties is determined from a consideration of their words and acts. *Id.*

To determine whether a meeting of the minds occurred in this case, we turn to the testimony presented at the hearing. Both parties testified that, during the weekend of March 11, 2006, they met on Saturday and Sunday to discuss division of the property. Appellant testified that they divided most of the personal property on March 13, 2006, after they met and that she believed that there was an oral agreement between them regarding division of the personal property. Appellee testified that they did not come to an understanding on Saturday

but came to “somewhat” of an agreement on Sunday night. He said that they met on Monday morning in the parking lot of appellant’s work and came to an agreement. He said that the agreement was that they would divide the property and then his attorney would draw up a paper that appellant would sign. However, he testified that, when he gave the agreement to appellant to sign, she would not sign it. In addition to an agreement regarding the division of property, the proposed written agreement contained a paragraph stating that appellant would not make any demands in the future for an increase in alimony payments. Appellant claimed that this provision was not discussed and was not part of their oral agreement. Appellee said that appellant had agreed to this. Finally, the parties both testified that some of the items of personal property had not yet been divided.

The circuit judge stated at the hearing, “[L]ooks to me like they don’t have an agreement.” The court then specifically determined that there was not an agreement and ordered the property sold. In light of the conflicting testimony at the hearing and our standard of review requiring us to view the circuit court’s finding in the light most favorable to appellee, we hold that the circuit court’s finding is not clearly erroneous. Therefore, we affirm the circuit court’s decision ordering that the parties’ personal property be sold at auction as directed.

Affirmed.

VAUGHT and BAKER, JJ., agree.